DOCKET NO. X07 HHD-CV-14-5037565-S

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., et al.	:	SUPERIOR COURT
Plaintiffs	:	COMPLEX LITIGATION DOCKET
v.	:	AT HARTFORD
RELL, M. JODI et al.	:	
Defendants	:	JANUARY 6, 2016

DEFENDANTS' CORRECTED PRELIMINARY PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with the Supplemental Trial Management Order dated September 16, 2015 (Doc. #225.00) and the court's directives at the status conference held on December 3, 2015,[1] the defendants propose the following preliminary proposed findings of fact and conclusions of law.

PRELIMINARY PROPOSED FINDINGS OF FACT

1. Connecticut has a system of strong local control deeply embedded in both our traditions and state law. Connecticut's districts exert substantial control over how much money is spent on education and how it is spent.
2. Connecticut has a high quality educational system that produces excellent results. E.g., DTX 2421, PP 17, 18.
3. Connecticut's public education system spends more per pupil on education than almost any other state, even accounting fully for the cost of living in Connecticut. See, e.g., DTX 2435, CHART 4; DTX 2422, CHART 14. By almost any measure, Connecticut ranks in the top handful of states for per pupil education spending, along with New York and Massachusetts. In 2011-12, when the federal stimulus money (more formally, funds

[1] The court instructed the parties to file "up to 30 material findings." See Trial Transcript, December 3, 2015, pp. 72-3.

provided by the American Recovery and Reinvestment Act, or ARRA) to the states ran out, Connecticut was one of only a few states to fully refill that gap with state revenue. DTX 5684. Connecticut is second only to North Dakota in the percentage increase in spending per student, inflation adjusted, for the years FY08-FY14. DTX 4708. In contrast, 35 states provided less funding in 2013-14 than before the 2007-09 recession. DTX 4708.

4. Connecticut has spent over 3 billion of state dollars and has administered over 430 million of federal funds for educational purposes from 2012 – 2015 in selected districts[2] as broken down in DTX 4716 and DTX 5813.

5. Connecticut has committed over 2 billion dollars in school construction projects in selected districts over the last ten years as seen in DTX 6024. The State has a generous reimbursement/funding system for school construction. The poorer a school district, the higher proportion of expenses the state reimburses the district. See DTX 4717.

6. Connecticut has allocated $196,971,032 in bond grants to selected towns (exclusive of school construction principal and interest) as reflected in DTX 4719.

7. Connecticut's Education Cost Sharing (ECS) system generally provides the most state support to the poorest districts, and the least state support to the wealthiest districts. See DTX 2435, CHART 16. In fact, the amount of state aid provided is roughly in inverse proportion to the wealth of the districts. Because of this massive infusion of state aid to the poorest districts overall district by district per pupil expenditures are not closely correlated with district wealth. Plaintiffs have not shown by a preponderance of the

[2] The term "selected districts" as used in Findings of Fact ## 4-6 are the plaintiff districts, which are Bloomfield, Bridgeport, Danbury, East Granby, East Hartford, Hartford, New Britain, New London, Norwich, Plainfield, Stamford, Windham, CREC and Norwich Free Academy.

evidence that any district has inadequate resources to provide adequate educational opportunities.

8. Connecticut's teachers' average salaries rank at the very top in the nation, see DTX 2427, Figure 3. Connecticut's average teachers' salaries have risen steadily over the past twelve years, from $54,607 in 2002-03 to $69,958 in 2013-14. See DTX 3813.
9. In 2013-14, the vast majority of Connecticut's rated teachers were rated as "proficient" or "exemplary." DTX 3699 and DTX 3701.
10. In implementing the reforms, the executive and legislative branches of government have acted aggressively and appropriately to provide professional support, professional resources, financial resources and strong accountability to help improve those districts most in need through programs including the Alliance Districts and Commissioner's Network. Testimony of Wentzell, Pryor, Barth, Adamowski and Villanova. P.A. 12-116.
11. In addition to additional management and administrative support, the Alliance District program poured well over an additional $400 million into the 30 lowest performing districts alone in the last 3 fiscal years, an unprecedented increase in resources in such a short period of time for those districts. DTX 5682 (TOP LINE).
12. While these reform programs have not been in effect long enough to produce definitive results, they are aggressive well thought out best practices appropriately aimed at bringing major improvement to the targeted districts. In addition, this massive infusion of new funds has remained relatively untouched as many other areas of the state budget have been significantly reduced. At its most recent special session the General Assembly reduced the current State budget by over $300 million, leaving ECS funding, including the Alliance Districts, substantially untouched.

13. As Connecticut's public school population has declined, state funding for education has increased. DTX 5353 and DTX 5682. There is virtually no relationship in Connecticut between per pupil spending and either student achievement or growth in student achievement. See, e.g., DTX 2426, p. 1, "Knowing how much a district spends per student tell us virtually nothing about the level or growth of achievement of a student . . . "; pp. 16 Figure 10, p. 16. (virtually no relationship between per pupil expenditure and achievement or growth in achievement) See also Horne v. Flores, 557 U.S. 433, 464-5, 467 (2009) (recognizing the "growing consensus in education research that increased funding alone does not improve student achievement" and that "education literature overwhelmingly supports reliance on accountability-based reforms as opposed to pure increases in spending," citing, among others, defendants' expert Eric Hanushek).
14. Similarly, there is no relationship between the nature or size of the achievement gap and per pupil expenditures in CT. Testimony of Podgursky. Educational improvement comes primarily from improved leadership, administration, accountability measures, and strong support for stronger teaching, and not from adding money to an already well-financed system. Testimony of Wentzell, Pryor, Adamowski, Villanova, Leone.
15. The achievement gap is a complex problem not easily remedied by courts or the government. Our own state Achievement Gap Task Force has acknowledged that threshold issues affecting the achievement gap are poverty, hunger and inadequate housing. DTX3364 at 9 – 14. Attempting to remediate those problems is admirable and desirable. But, our Supreme Court has held that adequate income, adequate housing and adequate food are not constitutional rights under our state constitution. Our schools and educational system cannot eliminate poverty or poor housing. Our schools and

educational system are effectively working to level the playing field, but they cannot be held accountable for eliminating ALL of the effects of poverty and other factors beyond their control. Nevertheless, Connecticut is making important progress. For example: plaintiffs admit in response to Defendants' RFA # 520, "CT's results show a statistically significant narrowing of the achievement gap between Grade 12 black and white students in reading from 2009 to 2013"; plaintiffs admit in response to RFA#760 that "over the last 4 years, graduation rates increased by nearly 10 points for black students, by 10 points for Hispanic students, and 13.2 points for all low-income students."

16. Connecticut's Office of Early Childhood ("OEC") is one of only four cabinet-level state agencies in the country, including Massachusetts, Washington, and Georgia, which focus exclusively on early childhood education. PTX 512.
17. Despite its relatively small population, CT ranks third in the country in the number of pre-K programs accredited by the National Association for the Education of Young Children (NAEYC), a widely respected preschool credentialing organization after only the much more populous states of, Massachusetts and California. DTX 4545, 4579, OEC_Adams0028284-0030410, https://www.naeyc.org/academy/accreditation/search, http://eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices?language=0&searchBy=state&findType=All&findAddress=&findCity=&findState=CT&findZip=&findRadius=5&submitSearch=Search#entryTotal.
18. Connecticut ranks third in the country in state per pupil spending for pre-K. DTX 4548 p. 17.
19. As part of its efforts to narrow the achievement gap, Connecticut supports LEAD CT, a collaboration of several Connecticut and national organizations, focused on recruiting,

selecting, preparing developing, and retaining school and district leaders to strengthen student learning across all Connecticut districts and classrooms, with a priority focus on the schools and districts in most need of improvement in student performance, the Alliance Districts. DTX 5746, Testimony of Villanova, Barzee.

20. As of the academic school year 2014 - 2015, Connecticut had 34,833 English Learners (ELs) in 173 public Local Education Agencies. They constituted 6.6% of all public school students in kindergarten through twelfth grade. ELs receive English language services from Teachers of English to Speakers of Other Languages (TESOL), bilingual certified teachers, or other personnel who have received training in English language acquisition. SDE August 2015 Data Bulletin. http://www.sde.ct.gov/sde/lib/sde/pdf/evalresearch/el_databulletin_aug2015.pdf.

21. Federal Title III and state Bilingual grants, totaling approximately $7 million in 2014-15 and 2015-16 are available for districts to use in support of EL students, although not all districts apply for them. http://www.sde.ct.gov/sde/cwp/view.asp?a=2683&Q=320346. SDE August 2015 Data Bulletin, http://www.sde.ct.gov/sde/lib/sde/pdf/evalresearch/el_databulletin_aug2015.pdf; Salazar-Glowski Depo testimony 8-24-15, p. 34:4-7; p. 84:17-86:13. Proposed testimony of Alubicki Flick.

22. SDE provides technical assistance and professional development training regarding teaching EL students to the districts and regional education services centers throughout the State and has developed a three tier monitoring cycle for Title III federal funds intended to benefit EL students. Salazar-Glowski Depo Transcript 8-24-15, pp. 35:12-41:3; pp. 98-100. Proposed testimony of Alubicki Flick.

23. CSBE and CSDE provide guidelines and assistance regarding the different responsibilities of the state, districts, schools, and educators related to the support of English Learners. CSBE's 2010 Position Statement on the Education of Students Who Are English Language Learners - Components of High Quality English as a Second Language (ESL) and Bilingual Education Programs, Guidelines for Policymakers, http://www.sde.ct.gov/sde/LIB/sde/pdf/board/esl.pdf; English Learner Programs and Services in Connecticut Public Schools: A Resource Handbook for Administrators (2nd edition), http://www.sde.ct.gov/sde/lib/sde/pdf/curriculum/bilingual/el_admin_resource_handbook.pdf; Scientific Research-Based Interventions for English Language Learners: A Handbook to Accompany Connecticut's Framework for RTI as guidelines. http://www.sde.ct.gov/sde/lib/sde/pdf/curriculum/bilingual/SRBI_ELL.pdf.

24. CSDE developed new standards for proficiency in English, with Correspondences to K–12 English Language Arts (ELA), Mathematics, Connecticut C3 Social Studies, and Science Connecticut Core Practices, K–12 English Language Arts Connecticut Core Standards (CCS), and 6-12 Connecticut Core Standards for Literacy in the Content Areas, known as the Connecticut English Language Proficiency Standards (CELP) and, on October 7, 2015, these standards were adopted by the CSBE. http://www.sde.ct.gov/sde/lib/sde/pdf/curriculum/bilingual/celp_standards.pdf. Proposed Testimony of Ellen Cohn. Connecticut is the only state in the nation to provide English Language Proficiency standards in the Social Studies area. Proposed Testimony of Megan Alubicki Flick.

25. The State of Connecticut and the school districts in Connecticut properly implement the federal Individuals with Disabilities Education Act (IDEA) and the parallel Connecticut special education statutes and state rules. Reschly Report, Exhibit 2428, pp. 4, 19. Districts with past compliance problems receive additional monitoring and assistance from the state. Id., p. 19. The current resources for IDEA implementation are adequate to meet the statutory requirements of the state and federal legislation. Id., p. 4. Further, Connecticut has a more favorable record in implementing the IDEA than nearly all other states in the northeast region. Id., pp. 14-16.

26. Connecticut Education Reform legislation enacted in 2012, P.A. 12-116, §§ 7, 19, 89-91, is intended to improve school achievement through implementation of scientific research-based instruction, particularly in reading, matched to student needs. Reschly Report, Exhibit 2428, pp. 49-51. The provisions of this law, once fully implemented, have significant potential to improve teacher preparation and achievement in general and special education in particular. Id.

27. Connecticut high school graduation rates are continuing to improve.

    a. In 2014, the statewide graduation rate increased 1.5 points to 87.0 percent, up a total of 5.2 points since 2010. In 2014, black, Hispanic, and free-or-reduced-price-lunch-eligible (an indicator of poverty) students continued to outpace the statewide average yearly increase in graduation rates at 2.9 points, 3.8 points, and 3.8 points, respectively. Over the last four years, graduation rates increased by nearly 10 points for black students, by 10 points for Hispanic students, and by 13.2 points for low-income students. Def's RFA's ## 759(b), 760.

b. The Educational Reform Districts, a subset of the Alliance Districts constituting the 10 lowest performing districts in the state, showed a 2.5-point gain in graduation rates in 2014 as compared with 2013. New Haven Public Schools, an educational reform district, have increased their graduation rate by 13 points since 2010, to a 75.5 percent graduation rate in 2014. Def's RFA # 761.

c. By 2014, the graduation rate gap between black students and white students decreased to a 13.6-point gap, down from 20 points in 2010. Overall, the gap has decreased 6.4 points since 2010, representing a gap closure of 31.8 percent. The graduation rate gap between Hispanic students and white students decreased to an 18.3-point gap-down from 24.7 points in 2010. Overall, the gap decreased 6.4 points since 2010, representing a gap closure of 26.1 percent. Def's RFA ## 762-763.

d. Using free and reduced-priced meal eligibility as an indicator of family wealth, the graduation rate gap between low-income students and their more affluent peers decreased by 2014 to a 17.9-point gap, down from 25.7 points in 2010. Overall, the gap decreased by 7.8 points since 2010, representing a gap closure of 30.2 percent. Def's RFA # 764.

28. CSDE provides materials, resources and support to Districts to assist them in developing curricula that align with the Common Core State Standards (CCSS) and State assessments in the various instructional subject matter areas. http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&Q=320954 ;

Testimony of Cohn and Wentzell.

29. For school years 2013-14, 2014-15 and 2015-16, the State made funding available to Districts through technology grants to assist Districts with various technological aspects

of implementing the CCSS and the related Smarter Balanced Assessments. (Testimony of Ellen Cohn; Defs. Ex. #4146; 2013-14 CSDE Request for Proposals, Technology Investments to Implement Common Core State Standards and Administer Common Core aligned Assessments, Specifically Smarter Balanced Assessments 2013-14 (2013-14 RFP), available at: http://www.sde.ct.gov/sde/lib/sde/pdf/rfp/rfp801_ccss_technology_2013.pdf; 2014-15 Request for Proposals, District Technology Upgrades to Support Transition to the New Standards, available at: http://www.sde.ct.gov/sde/lib/sde/pdf/rfp/rfp813_district_technology_support_transition_new_standards.pdf ; 2015-16 Request for Proposals, District Technology Upgrades to Support Transition to the New Standards, available at: http://www.sde.ct.gov/sde/lib/sde/pdf/rfp/rfp813_technology_grant_15-16.pdf.

30. All plaintiffs have failed to prove a deprivation of their constitutional rights.

PRELIMINARY PROPOSED MATERIAL CONCLUSIONS OF LAW

1. The opinion of Justice Palmer constitutes the applicable legal standard.

When this case was remanded by our supreme court for trial, there was no majority opinion of the court. Connecticut Coalition for Justice in Education Funding v. Rell, 295 Conn. 240 (2010)(hereafter "CCJEF v. Rell"). Although four justices voted to reverse the granting of defendants' motion to strike and remand the case for trial, those four justices did not agree on the legal standard to be applied at trial. Justice Palmer, who provided the deciding fourth vote to reverse and remand for trial, explicitly rejected the scope of the right articulated by the plurality and instead articulated a more narrow and specific standard. CCJEF v. Rell, 295 Conn. at 321 (Palmer, J., concurring)("I am unable to join the plurality opinion, however, primarily because I

take a different view from the plurality with respect to the scope of the right .... in my view, [CCJEF] will not be able to prevail on their claims unless they are able to establish that what the state has done to discharge its obligations ... is so lacking as to be unreasonable by any fair or objective standard."); see also id. at 342 (Palmer, J., concurring) (setting forth specific essential requirements for a minimally adequate education).

Justice Palmer's definition of a "minimally adequate education" in his concurring opinion and his view of the deference owed to the political branches of government constitute the ruling of the Supreme Court as to the scope of the constitutional right guaranteed by article eighth, § 1. CCJEF v. Rell, 295 Conn. at 320-47 (Palmer, J., concurring). Justice Palmer's concurring opinion constitutes "the holding of the Court," as it was based on the "narrowest grounds [upon which a majority of the court agreed]." State v. Ross, 272 Conn. 577, 604 n.13 (2005), quoting Marks v.United States, 430 U.S. 188, 193 (1977). Accordingly, plaintiffs' claims must be evaluated using Justice Palmer's standard, which affords considerable deference to the political branches. See Docket No. HHD-CV05-4050526-S, #144.00 at 3-6 (summarizing Justice Palmer's opinion); CCJEF, 295 Conn. at 343-44 (Palmer, J., concurring)("…the deference owed to the political branches in matters of education policy dictates that, unless the plaintiffs can demonstrate that the actions that the state has taken to satisfy the particular requirement in dispute cannot reasonably be defended as minimally adequate, the court must defer to the judgment of the political branches in the matter…. the plaintiffs must establish that the action that the legislature has taken to comply with article eighth, § 1, reasonably cannot be considered sufficient by any fair measure. Put differently, the plaintiffs are not entitled to relief unless they can demonstrate that the legislature's formulation of the scope of the right to a minimally adequate public education and its efforts in implementing that formulation are unreasonably

insufficient. Any less demanding standard would give insufficient voice to the reasoned judgment of the legislature."); at 317 (plurality)("So long as those authorities prescribe and implement a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education as set forth herein, then the judiciary should stay its hand.") Thus, this court must decide this case by determining whether the state offers a "minimally adequate education," as defined by Justice Palmer, giving deference to the determinations of the political branches of government.

Based upon this legal standard, the plaintiffs have failed to prove by a preponderance of the evidence that Connecticut does not offer a minimally adequate educational opportunity to its students.

2. Plaintiffs have failed to demonstrate that no set of circumstances exist under which the public educational system in Connecticut is constitutional. Therefore they fail in their facial challenge.

Plaintiffs initially pleaded this case as a class action. See Docket No. HHD-CV05-4050526-S, First Amended Complaint dated January 20, 2006 at 16-17 ¶¶ 39-44 (class allegations). Despite removing the class allegations, plaintiffs continue to request that this court "declare that the existing school funding system [in Connecticut] is unconstitutional, void and without effect" and "enjoin defendants from operating the current public education system, except as necessary to provide an expedient and efficient transition to a constitutional public education system….." Docket No. HHD-CV05-4050526-S, Doc. #163 at 46. Because these prayers for relief seek to invalidate entire portions of state law affecting all students, they must be treated as a facial challenge. See State v. Long, 301 Conn. 216, 244 (2011). "A facial challenge to the constitutionality of a statute or regulation, as distinguished from an as-applied challenge, seeks to invalidate a statute or regulation itself." 16 C.J.S. Constitutional Law § 243; Citizens United v. Federal Election Com'n, 558 U.S. 310 (2010) ("The distinction [between

facial constitutional challenges and as-applied constitutional challenges] is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint").

A facial challenge essentially is "a claim that the law is invalid in toto—and therefore incapable of any valid application." (Internal quotation marks omitted.) State v. Long, 268 Conn. 508, 522 n.21 (2004). "The proper framework to apply in a facial challenge is not to require the challenger to disprove every possible hypothetical situation in which the restriction might be validly applied but rather to apply the appropriate constitutional test to determine whether the challenged restriction is invalid on its face and thus incapable of any valid application." 16 C.J.S. Constitutional Law § 243; see also State v. Ross, 230 Conn. 183, 236 (1994)("The burden of proving unconstitutionality is especially heavy when, as at this juncture, a statute is challenged as being unconstitutional on its face." (citation omitted)) "In order to challenge successfully the facial validity of a statute, a party is required to demonstrate as a threshold matter that the statute may not be applied constitutionally to the facts of [the] case." (Internal quotation marks omitted.) State v. Bloom, 86 Conn.App. 463, 468 (2004),

Here, plaintiffs' own complaint concedes that some Connecticut students are receiving a constitutionally adequate education. Plaintiffs' complaint refers to various Connecticut students as "non-plaintiff students" and repeatedly compares them to the named student-plaintiffs. Such comparisons are set out by referencing different schools and school districts. See, e.g., Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 26- 38, ¶¶ 87, 90, 93, 102, 109, 118, 123, 135; see also at 38, ¶ 135 ("the municipalities in which the plaintiffs reside"). Also, plaintiffs' complaint does not even allege that all student-plaintiffs suffer equally. See, e.g., id. at 26-36, ¶¶ 86, 102, 103-07, 111, 112, 119, 120, 124. Plaintiffs have therefore failed to demonstrate or even allege

that the "existing school funding system" is incapable of any valid application. By plaintiffs' own complaint, many Connecticut students are receiving a constitutionally adequate education under the "existing school funding system" enacted by the legislative branches.

Additionally, the court must consider the nature of the constitutional right at issue in this case in light of plaintiffs' broad prayer for relief. Connecticut's affirmative constitutional duty to provide free elementary and secondary schools is owed to all Connecticut students. Horton v. Meskill, 187 Conn. 187, 195-96 (1982). The overwhelming majority of Connecticut's public school students are not parties to this case and plaintiffs' counsel do not represent them. By seeking to upend the entire Connecticut education system, plaintiffs are no doubt taking positions contrary to the interests of Connecticut students who have not chosen to challenge the constitutionality of their public education. Yet plaintiffs' requested relief to, inter alia, "declare that the existing school funding system [in Connecticut] is unconstitutional, void and without effect" and "enjoin defendants from operating the current public education system, except as necessary to provide an expedient and efficient transition to a constitutional public education system….." would necessarily deprive these students of their due process rights to the public education system enacted by the elected branches of state government. See State v. Long, 301 Conn. 216, 244 (2011)(finding that "the United States Supreme Court has recently explained that when a party's claim and the relief that would follow . . . reach beyond the particular circumstances of that party, the party must satisfy the standards for a facial challenge to the extent of that reach" (footnote and citations omitted)). Connecticut's students who are not parties to this case may not be stripped of their affirmative rights to the public education system established by their elected branches of government without due process or a successful facial

challenge. See Conn. Const. art. VIII, § 1 ("The general assembly shall implement this principle by appropriate legislation.")

3. Plaintiffs have failed as a matter of law in their burden to establish each of their claims. Plaintiffs have failed in their burden to establish an "as applied" challenge.

Even if plaintiff CCJEF has standing, see infra, this case is not a class action. Compare Docket No. HHD-CV05-4050526-S, First Amended Complaint dated January 20, 2006 at 16-17 ¶¶ 39-44 (class allegations) with Second Amended Complaint dated November 18, 2010 (Doc. #135.00)(class allegations removed) and Corrected Third Amended Complaint, Doc. #163.00(no class allegations). Therefore, each plaintiff must prove, inter alia, the current and ongoing irreparable deprivation of his or her constitutional right to a public education and show how he or she lacks an adequate remedy at law.

> A party mounting a constitutional challenge to the validity of a statute must provide an adequate factual record in order to meet its burden of demonstrating the statute's adverse impact on some protected interest of its own, in its own particular case, and not merely under some hypothetical set of facts as yet unproven. Whether a case comes to us by way of reservation or after a final judgment, the rule is the same. We do not give advisory opinions, nor do we sit as roving commissions assigned to pass judgment on the validity of legislative enactments….

Motor Vehicle Manufacturers Assn. of the United States, Inc. v. O'Neill, 203 Conn. 63, 75 (1987); see also Lehrer v. Davis, 214 Conn. 232, 234–35 (1990); State v. Zach, 198 Conn. 168, 176–78 (1985).

Plaintiffs' burden is extremely high. State statutes enjoy "a presumption in favor of … constitutionality." State v. Joyner, 225 Conn. 450, 460 (1993) “The party attacking a validly enacted statute ... bears the heavy burden of proving its unconstitutionality beyond a reasonable doubt and we indulge in every presumption in favor of the statute's constitutionality.... In choosing between two constructions of a statute, one valid and one constitutionally precarious, we will search for an effective and constitutional construction that reasonably accords with the

legislature's underlying intent...." State v. Breton, 212 Conn. 258, 269 (1989)(citations omitted). Our supreme court has long instructed that "before an act of the legislature ought to be declared unconstitutional, its repugnance to the provisions or necessary implications of the constitution should be manifest and free from all reasonable doubt. If its character in this regard be questionable, then comity, and a proper respect for a co-ordinate branch of the government, should determine the matter in favor of the action of the latter.'" State ex rel. Andrew v. Lewis, 51 Conn. 113, 127–28 (1883), quoting Hartford Bridge Co. v. Union Ferry Co., 29 Conn. 210, 227 (1860).

Plaintiffs have failed to meet their burden of proof even by a preponderance of evidence under this standard.

4. Plaintiffs have failed as a matter of law in their burden to establish their equity claims.

Regarding plaintiffs' equity claims, our supreme court has explained that with respect to public education in Connecticut "absolute equality or precisely equal advantages are not required and cannot be attained in the most relative sense." Horton v. Meskill, 172 Conn. 615, 652 (1977). A "substantial degree of equality of educational opportunity" fulfills the state's constitutional requirement. Id. at 651. Additionally, our supreme court has also made clear that "the property tax is still a viable means of producing income for education." Id.

Based upon these legal standards, Plaintiffs have failed to meet their burden of proof even by a preponderance of the evidence.

5. Local boards of education carry out the state's constitutional responsibility to provide free public schools

"The state's responsibility for education is distributed through the ... statutory framework. The state board [of education] is charged with the broad and general power to supervise and control the educational interests of the state." (Internal quotation marks omitted.) New Haven v.

State Board of Education, 228 Conn. 699, 703 (1994); see also Conn. Gen. Stat. § 10-4(a). Connecticut General Statutes § 10–220 "delegates the duty to provide and administer public education to local and regional boards of education." New Haven, 228 Conn. at 703–704; see also W. Hartford Education Assn., Inc. v. DeCourcy, 162 Conn. 566, 573, 295 A.2d 526 (1972) ("The chief function of local boards of education is to serve as policy maker on behalf of the state and for the local community on educational matters. The state has had a vital interest in the public schools from the earliest colonial times.... Article VIII, § 1, of the Connecticut constitution provides that '[t]here shall always be free public elementary and secondary schools in the state. The [G]eneral [A]ssembly shall implement this principle by appropriate legislation.' Obviously, the furnishing of education for the general public is a state function and duty.... By statutory enactment the legislature has delegated this responsibility to the local boards who serve as agents of the state in their communities.... Our statutes have conferred on the local board broad power and discretion over educational policy." [Citations omitted; emphasis added.]).

Local boards of education must "fulfill the educational interests of the state by meeting certain mandates.... Public education mandates include the following: adequate and reasonable pupil transportation for those students who need transportation ... special education services sufficient to meet the individualized needs of certain children in the locality ... and the [minimum expenditure requirement]. If the local board of education fails or is unable to implement the educational interests of the state by carrying out these mandates, the state board may conduct an investigation, hold an administrative hearing pursuant to the Uniform Administrative Procedure Act [General Statutes § 4–166 et seq.], order appropriate remedial steps, and, if necessary, enforce its order in the Superior Court." (Citations omitted.) New Haven, 228 Conn. at 704–705.

The "general rule" is that "local educational matters are managed by local boards of education comprised of locally elected members. Even local boards of education overseeing low achieving schools and districts do not lose their local autonomy entirely simply because they are subject to additional supervision and direction by the state board pursuant to [Conn. Gen. Stat.] § 10–223e(c)." Pereira v. State Bd. of Educ., 304 Conn. 1, 33-35 (2012).

Additionally, although the right to a public education is fundamental, not all allegations regarding school policy made by the districts fall within the scope of article eighth, § 1. See Campbell v. Bd. of Ed, 193 Conn. 93, 104-5 (1984)(school board's policy of imposing uniform school-wide academic sanctions for nonattendance "does not jeopardize any fundamental rights under our state constitution") Such district policies are reviewed "under the rational basis test" because of "the substantive due process requirement that all government acts be minimally rational rather than by any requirement stemming from the education guarantee." Benjamin v. Bailey, 234 Conn. 455, 464 (1995) citing Campbell, 193 Conn. at 105-06.

6. Whether the state has met its constitutional obligations must be judged by the educational opportunities provided to the plaintiffs, rather than by the plaintiffs' educational outcomes.

Plaintiffs' claims must fail unless they can demonstrate that the state is failing to provide plaintiffs with minimally adequate and equitable educational opportunities. CCJEF v. Rell, 295 at 320-21 (Palmer, J., concurring). Just as the Declaration of Independence guaranteed the pursuit of happiness and not happiness itself, the Connecticut Constitution guarantees each public school student a constitutional educational opportunity and not a particular outcome of education, such as a guaranteed test score or college admission. CCJEF v. Rell, 295 at 320-21 (Palmer, J., concurring).

A majority of our supreme court made clear that the education clause "is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs in their complaint." CCJEF v. Rell, 295 Conn. at 318-19 (plurality); 295 Conn. at 344-45 (Palmer, J., concurring)("It reasonably cannot be disputed, however, that, even though 'schools are important socializing institutions in our democratic society, they cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students.' Sheff v. O'Neill, supra, 238 Conn. at 144, 678 A.2d 1267 (Borden, J., dissenting); see also part III of the plurality opinion ('[T]he failure of students to achieve the goals of a constitutionally mandated education may be ... caused by factors not attributable to, or capable of remediation by, state action.... [W]e [therefore] recognize that [article eighth, § 1] is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs in their complaint....' [Citations omitted.] ").

7. PreSchool Services are not required by the Connecticut Constitution

Preschool services are not part of the state constitutional right at issue in this case for all of the reasons articulated in defendants' previous motion and accompanying briefs. See Doc. ##228.00(defendants' motion), 244.00 (reply), 228.86 (court reserved decision). As our supreme court has explained, "We are especially hesitant to read into the constitution unenumerated affirmative governmental obligations. In general, the declaration of rights in our state constitution was implemented not to impose affirmative obligations on the government, but rather to secure individual liberties against direct infringement through state action." Moore v. Ganim, 233 Conn. 557, 595 (1995).

8. Plaintiff CCJEF Lacks Standing.

Plaintiff CCJEF lacks associational standing for all of the reasons articulated in defendants' previous motion and accompanying briefs. See Docket No. HHD-CV05-4050526-S, Doc. ##103.00, 103.1, 106.00, 164.00 (motion to dismiss), 165.00 (memorandum in support of motion to dismiss), 180.00 (reply) denied in part #206.00. Under CCJEF's Articles of Incorporation and by-laws, the only "members" of CCJEF with standing on their own (parents and students) lack voting rights in CCJEF. See Docket No. HHD-CV05-4050526-S, Doc. #180.00 at 22. Because these members lack the ability to influence CCJEF and direct the litigation on that group's behalf, they are not actually "members" in any legally cognizable sense.

Further, even if CCJEF's parent and child members were "real" members of that organization, the organization alone would not have standing to make the claims it seeks to make in this case. This is because CCJEF cannot satisfy the third prong of the Hunt/Worrell test so that the participation of the individual members is not required. Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 617 (1986).

Subsequent to the trial court's decision with respect to CCJEF's associational standing in this case (Docket No. HHD-CV05-4050526-S, Doc. #206.00), another trial court has issued a decision directly and accurately analyzing whether the individual participation of association members in a constitutional challenge of a similar nature is required under the thee part Hunt/Worrell test for associational standing. See Disabled Americans for Firearm Rights, LLC v. Malloy, No. CV136016992, 2014 WL 1012285 at *5 (February 6, 2014)(explaining that the association's challenge to state law based on the state constitutional right to bear arms "would clearly require the participation of individual members of [the association]. In their complaint, the plaintiffs allege that disabled persons, including members of [the association], require certain

features [of firearms] prohibited by Public Act 13–3 in order to exercise their rights. A determination of this allegation would require evidence of the specific physical disabilities of each individual.") (hereafter "DAFR"). DAFR, like this case, involved an association seeking to challenge state law on the basis of the Connecticut Constitution. And, as in DAFR, CCJEF as an organization cannot establish associational standing because the individual participation of those CCJEF members who would have standing is required. As was the case in DAFR, this court cannot determine whether the pertinent members of CCJEF have been denied their constitutional right to a public education without considering evidence as to those individuals. Accordingly, CCJEF fails to meet the third prong of the Hunt/Worrell test.

While CCJEF's actual voting membership includes local boards of education and municipalities, it is beyond dispute that those entities do not have standing to sue the defendants in this case. See Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 15-16, ¶ 47. The local board of education, in providing educational services, is actually an arm of the state – the defendants in this case. See Pereria v. State Bd. of Educ., 304 Conn. 1, 33, 44-45; R.A. Civitello Co. v. New Haven, 6 Conn. App. 212, 218 (1986); Derfall v. W. Hartford, 25 Conn. Supp. 302, 304-05 (1964) ("In this state, local boards of education are not agents of the towns but are creatures of the state."); see also Docket No. HHD-CV05-4050526-S, Plaintiffs' Corrected Third Amended Complaint, Doc. #163.00 at 37 ¶ 128 ("Public schools in Connecticut are agencies of the State."). With respect to municipalities, the Connecticut Supreme Court has long held that "[t]owns ... are creatures of the state, and though they may question the interpretation, they cannot challenge the legality of legislation enacted by their creator." Conn. Ass'n of Bds. of Educ. v. Shedd, 197 Conn. 554, 558-59 (1985); Berlin v. Santaguida, 181 Conn. 421, 424 (1980); Windsor v. Windsor Police Dep't Employees Ass'n., Inc, 154 Conn. 530 (1967);

Waterford v. Conn. State Bd. of Educ., 148 Conn. 238, 245 (1961). And, of course, municipalities and boards of education enjoy no constitutional rights under Article Eighth, § 1. Horton v. Meskill, 187 Conn. 187, 195-96 (1982).

As the trial court correctly held in ruling on a precursor to this litigation, in Johnson v. Rowland, X03 CV 98 0492103S, Memorandum of Decision on Motion to Dismiss dated May 18, 1999 "[t]he plaintiff municipalities not only have no authority to allege violations of constitutional rights that do not belong to them, but also have no authority to challenge the constitutionality of laws enacted by their creators, the State of Connecticut." Id. at 2-3. The various dues paying and voting members of CCJEF – including Connecticut municipalities – who otherwise lack the ability to "allege violations of constitutional rights that do not belong to them" cannot achieve standing by adding so-called "members" who lack the essential indicia of that status.

9. Plaintiff Richard Molinaro lacks standing.

Plaintiffs' operative complaint provides: "The plaintiff, Richard Molinaro, a resident of Danbury, brings this action on his own behalf and as next friend of his minor granddaughter, Jada Mourning." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 5 ¶ 8. Plaintiffs' complaint further states that Jada Mourning "resides with her mother." Id. at 5 ¶ 9.

The complaint fails to allege, as it must, that Plaintiff Molinaro is Mourning's guardian or otherwise explain how due to "certain exceptional circumstances" Molinaro has standing in this case to raise the claims of his granddaughter. See Orsi v. Senatore, 230 Conn. 459, 466-67 (1994). Although Molinaro claims he is bringing this lawsuit "on his own behalf," only students are entitled to attend "free public elementary and secondary schools" pursuant to Article Eighth, § 1 of the Connecticut Constitution. Sheff v. O'Neill, 238 Conn. 1 (1996); Broadley v. Board of

Education, 229 Conn. 1 (1994); Horton v. Meskill, 172 Conn. 615 (1974). While typically parents do have the right to pursue claims on behalf of their children, as indeed they have done elsewhere in this lawsuit, parents do so, not in their own right, but rather as "next friends" to their minor children. See Carrubba v. Moskowitz, 274 Conn. 533, 550-551 (2005).

10. Plaintiff Emily Black lacks standing.

Plaintiff Emily Black graduated Norwich Free Academy in 2014. Since she is no longer a public school student, she lacks standing in this case, which seeks declaratory and injunctive (prospective) relief. See Aqleh v. Cadlerock Joint Venture II, L.P., 299 Conn. 84, 98 (2010) ("[T]he extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm."); Moore v. Bender, 2014 WL 4099345, at *9 (Conn. Super. Ct. July 14, 2014) ("[O]ur Supreme Court has concluded that because of the prospective and forward-looking nature of injunctive relief, a party seeking an injunction is only required to show substantial probability that it is suffering or will suffer irreparable harm unless the injunction is granted by the court.")

11. Plaintiff Gregory Gay lacks standing.

Plaintiff Gregory Gay graduated New Britain High School in 2015. Since he is no longer a public school student, he lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

12. Plaintiff Merrill Gay lacks standing.

Plaintiff Merrill Gay has brought this action "on his own behalf and on behalf of his minor child, Gregory Gay." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 12 ¶ 35. As

noted above, Merrill Gay's son Gregory Gay lacks standing. Although Merrill Gay claims he is bringing this lawsuit "on his own behalf" only students are entitled to attend "free public elementary and secondary schools" pursuant to Article Eighth, § 1 of the Connecticut Constitution. Sheff v. O'Neill, 238 Conn. 1 (1996); Broadley v. Board of Education, 229 Conn. 1 (1994); Horton v. Meskill, 172 Conn. 615 (1974). While typically parents do have the right to pursue claims on behalf of their children, as indeed they have done elsewhere in this lawsuit, parents do so, not in their own right, but rather as "next friends" to their minor children. See Carrubba v. Moskowitz, 274 Conn. 533, 550-551 (2005).

13. Plaintiff Stephanie Illingworth lacks standing.

Plaintiff Stephanie Illingworth graduated Central High School (Bridgeport) in 2015. Since she is no longer a public school student, she lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

14. Plaintiff Hernan Illingworth lacks standing.

Plaintiff Hernan Illingworth has brought this action "on his own behalf and on behalf of his minor child, Stephanie Illingworth." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 7 ¶ 15. As noted above, Hernan Illingworth's daughter Stephanie Illingworth lacks standing. Therefore, Hernan Illinngworth lacks standing for the same reasons stated regarding Plaintiff Merrill Gay.

15. Plaintiff Dharan Velasquez lacks standing.

Plaintiff Dharan Velasquez graduated Capital Prep, a public high school, in 2014. Since he is no longer a public school student, he lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

16. Plaintiff Brian Wisniewski lacks standing.

Plaintiff Brian Wisniewski graduated Plainfield High School in 2015. Since he is no longer a public school student, he lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

17. Plaintiff Donna Johnston lacks standing.

Plaintiff Donna Johnston has brought this action "on her own behalf and on behalf of her minor child, Brian Wisniewski." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 6 ¶ 14. As noted above, Donna Johnston's son Brian Wisniewski lacks standing. Therefore, Donna Johnston lacks standing for the same reasons stated regarding Plaintiff Merrill Gay.

18. Plaintiff Brandon Wolfe lacks standing.

Plaintiff Brandon Wolfe graduated Westhill High School in 2015. Since he is no longer a public school student, he lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

19. Plaintiff Zenitra Wolfe lacks standing.

Plaintiff Zenitra Wolfe has brought this action "on her own behalf and on behalf of her minor child, Brandon Wolfe." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 13 ¶ 40. As noted above, Zenitra Wolfe's son Brandon Wolfe lacks standing. Therefore, Zenitra Wolfe lacks standing for the same reasons stated regarding Plaintiff Merrill Gay.

20. Jacob Hall lacks standing.

Plaintiff Jacob Hall left Bridgeport public schools in 2014 to attend Fairfield Prep, a private school. Since he is no longer a public school student, he lacks standing in this case, which seeks declaratory and injunctive (prospective) relief for the same reasons stated regarding Plaintiff Emily Black.

21. Ricardo Figueroa and his mother Jennifer Lemus have failed to comply with discovery requests and, accordingly, should be dismissed.

22. Jennifer Lemus has brought this action "on her own behalf and on behalf of her minor child, Ricardo Figueroa." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 9 ¶ 24. Once her son is dismissed, Jennifer Lemus lacks standing.

23. Sovereign Immunity Bars Plaintiffs' Claims.

The defendants raised the issue of sovereign immunity both in support of their motion to dismiss and in response to plaintiffs' memorandum in opposition. See Docket No. HHD-CV05-4050526-S, Doc. ##164.00, 165.00 and 180.00 at 2-3. In particular, the defendants argued that to the extent plaintiffs seek increased monies from the state, such claims are barred by sovereign immunity. The court's opinion denying in part the defendants' motion to dismiss did not address the issue of sovereign immunity. See Docket No. HHD-CV05-4050526-S, Doc. #206.00.

"Sovereign immunity relates to a court's subject matter jurisdiction over a case." Columbia Air Servs. v. DOT, 293 Conn. 342, 349 (2009). "[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity; (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights; and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority." Id.

(internal citations omitted). In the absence of a statutory waiver of sovereign immunity, a plaintiff may not bring a monetary action against the state without authorization from the claims commissioner to do so. Miller v. Egan, 265 Conn. 301, 317 (2003).

The complaint itself supports defendants' position. Plaintiffs have explicitly requested that this court, inter alia, "declare that the existing school funding system is unconstitutional, void and without effect…" and "order defendants to create and maintain a public education system that will provide suitable and substantially equal educational opportunities to plaintiffs." Docket No. HHD-CV05-4050526-S, Doc. #163.00 at 46. While these prayers for relief sound in equity and do not explicitly request the court to order an increase in state education funding, a thorough and fair reading of the entire complaint shows that an increase in state funding of education is precisely what plaintiffs seek. See id. at 3 ¶ 4("The level of resources provided by the State's education funding scheme is arbitrary and not related to the actual costs of providing a suitable education."); 37 ¶ 125 ("The unsuitability and inequality of the plaintiffs' educational opportunities, as well as the subsequent harm suffered, is caused by a flawed educational funding system."); 38 ¶ 120 (complaining that the state funded 39% of education statewide in 2003 and asserting that number should have been 50%); 38 ¶ 134 ("The municipalities in which plaintiffs reside do not have the ability to raise the funds needed to compensate for the monetary shortfalls that result from the State's arbitrary and inadequate funding system."); 39 ¶ 144 (complaining that in October of 2003 the "foundation" amount of the Education Cost Sharing Formula should have been $2,009 more than the current "foundation" amount).

Notably, plaintiffs do not seek to declare unconstitutional any state laws involving education that do not involve funding. Plaintiffs argue that the state should increase the overall

level of state funding (adequacy) and distribute that funding in a different manner (equity), but they do not argue that anything else about public education other than state funding should be changed. Plaintiffs argue that until this is done they are being deprived of their constitutional rights under Article Eighth,§ 1. These prayers for relief show that plaintiffs' case is solely about money.

Our supreme court has held that in determining the nature of relief sought, a court must look beyond the manner in which the plaintiffs have worded the complaint. See DaimlerChrysler Corp. v. Law, 284 Conn. 701, 723 (2007) ("The plaintiff's request for relief – an order that the defendant refund all sales taxes for which the plaintiff had submitted a claim for refund – must be characterized as a claim for damages.") Plaintiff CCJEF describes the nature of its activities in its bylaws as follows:

> (a) engage in activities that promote the adequate funding of education in the State of Connecticut;
> (b) engage in activities that relieve the burdens of Connecticut municipalities in funding education;
> (c) engage, subject to the limitations of IRC Section 501(c)(3) and those set forth below, in any lawful act or activity for which a corporation may be organized under the Revised Nonstock Corporation Act of the State of Connecticut in furtherance of the foregoing.

Docket No. HHD-CV05-4050526-S, Doc. #180, Exhibit 10. These activities do not concern remedies sounding in equity; they concern both increasing the amount of state funding for education and decreasing the amount of local funding. Plaintiffs also argued in their opposition brief "[t]he irrational, underfunded ECS formula ... is at the core of the Plaintiffs' case." Docket No. HHD-CV05-4050526-S, Doc. #174.00 at 12 and that the 2012 reforms were legally insignificant because they did not involve significant increases in money. Id. at 9.

Overwhelming evidence demonstrates that this case is about money. There is no question that plaintiffs seek an increase in state funding of public education. Accordingly, sovereign

immunity bars this court from hearing such claims. Plaintiffs must instead bring their claims to the Claims Commissioner.

RESERVATION OF RIGHTS

Defendants hereby reserve all the legal arguments previously made in other pleadings, not addressed here, and any other legal arguments based upon evidence and lack of evidence at trial.

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CERTIFICATION

The foregoing Defendants' Corrected Preliminary Proposed Findings of Fact and Conclusions of Law was e-mailed this 6th day of January, 2016 to the following counsel of record:

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